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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

WILLIAM WALKER

Plaintiff

vs

IN-N-OUT BURGERS INC.

Defendant

Case No. 3:23-cv-354

PRODUCTS LIABILITY

28 U.S.C. § 1332

Demand for Jury Trial

1.

JURISDICTION AND VENUE

Jurisdiction is proper under 28 U.S.C. § 1332 because plaintiff is a citizen of Oregon and defendant is a citizen of California and the amount in controversy requirement is satisfied.

2.

Venue is proper under 28 U.S.C. § 1391 because a substantial part of the acts and omissions giving rise to plaintiff's claim for products liability occurred in Oregon.

3.

FACTUAL ALLEGATIONS

On April 12, 2022 in Grants Pass, Oregon, defendant manufactured, advertised, and sold plaintiff a burger that contained a hard, dangerous foreign object believed to be a bone fragment.

4.

While taking a bite of defendant's burger, plaintiff unknowingly bit down onto the object, injuring his tooth, causing pain and discomfort, requiring plaintiff to go to the dentist.

5.

Defendant advertises that it removes the bones, grinds the meat, and then makes each burger patty using only fresh, individually inspected, whole chucks from premium cattle.

6.

None of defendant's advertisements or packaging associated with the burger it sold to plaintiff warned plaintiff that its burgers may contain hard, dangerous foreign objects, such as bone fragments.

7.

Plaintiff provided defendant a written demand for the payment of this claim not less than 30 days before the commencement of this complaint and otherwise complied with ORS 20.080.

8.

CLAIM FOR PRODUCTS LIABILITY

Count 1: Strict Liability

As alleged in this complaint, defendant is in the business of manufacturing and selling burgers, the burger it sold to plaintiff was in a defective condition that was unreasonably dangerous to plaintiff when it was delivered because it contained a foreign object believed to be a bone fragment, which would not be contemplated by ordinary consumers like plaintiff who purchased one of defendant's burgers, and plaintiff was physically injured while eating defendant's burger.

9.

Count 2: Negligence

As alleged in this complaint, defendant's failure to provide any warning to plaintiff that its burgers may sometimes contain hard foreign objects including bone fragments, when defendant knew or should have known of the unreasonable risk of physical injury when eating one of its burgers containing foreign objects including bone fragments, caused plaintiff to suffer physical injury while eating defendant's burger.

10.

Count 3: Breach of Implied Warranty of Merchantability

As alleged in this complaint, defendant is in the business of selling burgers, and in selling its burger to plaintiff, defendant warranted that the burger was fit for consumption, but the burger was not fit for consumption because it contained a foreign object believed to be a bone fragment, and but for defendant selling plaintiff a burger not fit for human consumption, plaintiff would not have purchased defendant's burger and would not have suffered physical injury while eating defendant's burger.

11.

Due to defendant's wrongful products liability acts and omissions as alleged in this complaint, plaintiff incurred dental bills and experienced pain, discomfort, emotional distress, and interference with life activities. Accordingly, plaintiff respectfully requests judgment against defendant for economic and noneconomic damages in amounts determined by the jury to be fair and reasonable, not to exceed a total of \$10,000. Under ORS 20.080, plaintiff also requests judgment for reasonable attorney fees.

12.

Request for jury trial.

13.

PRAYER FOR RELIEF

Plaintiff seeks relief against defendant as requested above, and for post-judgment interest, and costs, any other relief this Court may determine is fair. Plaintiff reserves the right to amend this complaint to adjust the claims for compensation and damages and to add claims and additional defendants. Some of the complaint's allegations are based in part on the memory of witnesses, which may later prove to be inaccurate in parts, and so the complaint may later be amended before trial to conform the allegations to the evidence obtained throughout the case. This complaint is made on personal knowledge as to plaintiff's actions and based on information and belief as to the actions of others.

March 12, 2023

RESPECTFULLY FILED,

s/ Michael Fuller

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Of Attorneys for Plaintiff

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